

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSHUA BANASIAK,

Plaintiff

v.

WARDEN BRIAN WILLIAMS,

Defendant

Case No. 3:20-cv-00414-MMD-CLB

ORDER

I. DISCUSSION

On July 8, 2020, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1). Plaintiff’s application to proceed *in forma pauperis* is incomplete. Plaintiff has not submitted an application on this Court’s approved form together with a financial certificate and an inmate account statement for the previous six-month period.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$400 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three the following documents to the Court:

- (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court’s approved form (i.e. pages 1 through 3 with the inmate’s two signatures on page 3),
- (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court’s approved form), and
- (3) a copy of the **inmate’s prison or jail trust fund account statement for the previous six-month period**.

Accordingly, the Court denies Plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) without prejudice because the application is incomplete. The Court will grant

1 Plaintiff a **one-time extension** to file a fully complete application to proceed *in forma*
2 *pauperis* containing all three of the required documents. Plaintiff will file a fully complete
3 application to proceed *in forma pauperis* on or before **September 8, 2020**. Absent
4 unusual circumstances, the Court will not grant any further extensions of time. If Plaintiff
5 is unable to file a fully complete application to proceed *in forma pauperis* with all three
6 required documents on or before **September 8, 2020**, the Court will dismiss this case
7 without prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to
8 acquire all three of the documents needed to file a fully complete application to proceed
9 *in forma pauperis*. To clarify, a dismissal without prejudice means Plaintiff does not give
10 up the right to refile the case with the Court, under a new case number, when Plaintiff has
11 all three documents needed to submit with the application to proceed *in forma pauperis*.
12 Alternatively, Plaintiff may choose not to file an application to proceed *in forma pauperis*
13 and instead pay the full filing fee of \$400 on or before **September 8, 2020** to proceed with
14 this case.

15 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court
16 will not file the complaint unless and until Plaintiff timely files a fully complete application
17 to proceed *in forma pauperis* with all three documents or pays the full \$400 filing fee.

18 Additionally, the Court notes that Plaintiff's forms submitted at ECF Nos. 1 and 1-
19 1 are state court forms. As such, the Court is unsure whether Plaintiff intended to file his
20 case in U.S. District Court or state court. Therefore, in the event Plaintiff meant to file his
21 case in state court and not U.S. District Court, Plaintiff may file a notice of voluntary
22 dismissal in this case.

23 **II. CONCLUSION**

24 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed
25 *in forma pauperis* (ECF No. 1) is denied without prejudice to file a new fully complete
26 application to proceed *in forma pauperis* with all three documents.

27 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
28 approved form application to proceed *in forma pauperis* by an inmate, as well as the

1 document entitled information and instructions for filing an *in forma pauperis* application.

2 IT IS FURTHER ORDERED that on or before **September 8, 2020**, Plaintiff will
3 either pay the full \$400 filing fee for a civil action (which includes the \$350 filing fee and
4 the \$50 administrative fee) or file with the Court:

5 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
6 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
7 signatures on page 3),

8 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
9 official (i.e. page 4 of this Court's approved form), and

10 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
11 **previous six-month period.**

12 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
13 application to proceed *in forma pauperis* with all three documents or pay the full \$400
14 filing fee for a civil action on or before **September 8, 2020**, the Court will dismiss this
15 action without prejudice for Plaintiff to refile the case with the Court, under a new case
16 number, when Plaintiff has all three documents needed to file a complete application to
17 proceed *in forma pauperis*.

18 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
19 (ECF No.1-1) but will not file it at this time.

20 DATED: July 10, 2020

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23 UNITED STATES MAGISTRATE JUDGE
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